

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

**Proposing rule making related to sex offender registry
and providing an opportunity for public comment**

The Public Safety Department hereby proposes to amend Chapter 83, “Iowa Sex Offender Registry,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 692A.130.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 692A.101(1)“a”(9), 692A.101(2)“a”(4), 692A.102(1)“c”(13), and 709.4.

Purpose and Summary

The proposed amendments to Chapter 83 reflect the new offense (continuous sexual abuse of a child) added by 2020 Iowa Acts, House File 2554, which was signed by the Governor on June 29, 2020. These proposed amendments update the definitions of the Sex Offender Registry (SOR) to reflect the addition of the new registrable offense. These amendments also remove outmoded references to 2009 Iowa Acts, Senate File 340, which made changes to the SOR language in the Iowa Code in 2009; to Iowa Code section 709C.1, which formerly made criminal transmission of HIV a registrable offense; to Iowa Code section 709.4, the since-revised statute relating to sexual abuse in the third degree; to risk assessments, which are no longer referenced in Iowa Code chapter 692A as of July 1, 2009; and to the DCI-150 form, which is now a tier notification form, not a request for registry information form. The outdated ten-day requirement is removed from rule 661—83.3(692A) pursuant to Iowa Code section 692A.109; verification is only required in the county of principal residence, and there is no ten-day requirement in the Iowa Code. Registrants have a month to verify their information; the rules will now reflect that.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Sarah Jennings
Department of Public Safety
Oran Pape State Office Building
215 East 7th Street
Des Moines, Iowa 50319
Phone: 515.725.6185
Email: jennings@dps.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule ~~661—83.2(692A)~~, definitions of “Aggravated offense,” “Aggravated offense against a minor,” “Sex offender,” “Sex offense,” “Tier I offender,” “Tier II offender” and “Tier III offender,” as follows:

“*Aggravated offense*” means a conviction for any of the following offenses:

1. Sexual abuse in the first degree in violation of Iowa Code section 709.2.
2. Sexual abuse in the second degree in violation of Iowa Code section 709.3.
3. Sexual abuse in the third degree in violation of Iowa Code section ~~709.4, subsection 1.~~ 709.4(1) “a.”
4. Lascivious acts with a child in violation of Iowa Code section ~~709.8, subsection 1 or 2.~~ 709.8(1) “a” or “b.”
5. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
6. Burglary in the first degree in violation of Iowa Code section ~~713.3, subsection 1, paragraph “d.”~~ 713.3(1) “d.”
7. Kidnapping, if sexual abuse as defined in Iowa Code section 709.1 is committed during the commission of the offense.
8. Murder in violation of Iowa Code section 707.2 or 707.3, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.
9. ~~Criminal transmission of human immunodeficiency virus in violation of Iowa Code section 709C.1, subsection 1, paragraph “a.”~~ Continuous sexual abuse of a child in violation of Iowa Code section 709.23.
10. Any conviction for an offense specified in the laws of another jurisdiction or any conviction for an offense prosecuted in a federal, military, or foreign court that is comparable to an offense listed in paragraphs “1” through “9” shall be considered an aggravated offense for purposes of registering under this chapter.

“*Aggravated offense against a minor*” means a conviction for any of the following offenses, if such offense was committed against a minor or otherwise involves a minor:

1. Sexual abuse in the first degree in violation of Iowa Code section 709.2.
2. Sexual abuse in the second degree in violation of Iowa Code section 709.3.

3. Sexual abuse in the third degree in violation of Iowa Code section 709.4, except for a violation of Iowa Code section ~~709.4, subsection 2, paragraph “c,” subparagraph (4)~~ 709.4(1) “b”(3)(d).

4. Continuous sexual abuse of a child in violation of Iowa Code section 709.23.

5. Any offense specified in the laws of another jurisdiction or prosecuted in a federal, military, or foreign court that is comparable to an offense listed in paragraphs “1” through “4” shall be considered an aggravated offense against a minor if such an offense was committed against a minor or otherwise involves a minor.

“Sex offender” means a person who is required to be registered under Iowa Code chapter 692A as amended by 2009 Iowa Acts, Senate File 340.

“Sex offense” means an indictable offense for which a conviction has been entered that ~~has an element involving a sexual act, sexual contact, or sexual conduct, and which is enumerated in 2009 Iowa Acts, Senate File 340, section 2,~~ is enumerated in Iowa Code section 692A.102 and means any comparable offense for which a conviction has been entered under prior law, or any comparable offense for which a conviction has been entered in a federal, military, or foreign court, or another jurisdiction.

“Tier I offender” means a registrant who has been convicted of one or more of the offenses enumerated in ~~2009 Iowa Acts, Senate File 340, section 2, subsection 1, paragraph “a,”~~ Iowa Code section 692A.102(1) “a.”

“Tier II offender” means a registrant who has been convicted of one or more of the offenses identified in ~~2009 Iowa Acts, Senate File 340, section 2, subsection 1, paragraph “b,”~~ Iowa Code section 692A.102(1) “b” and is not a “tier I offender.”

“Tier III offender” means a registrant who has been convicted of one or more of the offenses enumerated in ~~2009 Iowa Acts, Senate File 340, section 2, subsection 1, paragraph “c,”~~ Iowa Code section 692A.102(1) “c” and is not a “tier I offender” or a “tier II offender.”

ITEM 2. Amend subrules 83.3(2) and 83.3(3) as follows:

83.3(2) Registration.

a. Form DCI-145 ~~or Form DCI-144R~~, Sex Offender Registration, shall be completed, as required by ~~2009 Iowa Acts, Senate File 340, section 4, subsection 8~~ Iowa Code section 692A.104, on behalf of each offender and submitted, in printed or electronic form, to the sheriff of each county in which the offender will be residing, employed, or attending classes and to the division of criminal investigation, in order to satisfy the registration requirements of the Iowa sex offender registry. This form shall also be completed on behalf of each offender and submitted to the sheriff of any county in which the offender will be a student, be employed, or be engaged in a vocation on a full-time or part-time basis, in order to satisfy the registration requirements.

b. Form DCI-145, or information stored by the division of criminal investigation, shall be used to report changes of residence, telephone number, name of registrant, or change in status as a student, employee, or practicing a vocation at an institution of higher education. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of any county of residence each time the registrant’s relevant information changes. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of the county in which the registrant is a student, an employee, or practicing a vocation on a full-time or part-time basis at an institution of higher education within five days of the registrant’s becoming a student, an employee, or engaged in a vocation at the institution of higher education. The original of each completed Form DCI-145 shall be forwarded to the division of criminal investigation by the registering agency within three days of receiving the completed form.

(1) If any place of residence of a registrant changes from one county to another, the registrant shall submit copies, in printed or electronic form, of completed Form DCI-145 reporting the change of residence to the sheriff of the prior county of residence and the sheriff of the new county of residence. The sheriff of the new county of residence shall be responsible for transmitting a copy of completed Form DCI-145 to the Iowa sex offender registry.

(2) When the department receives notification that a registrant has changed residence to a location outside of Iowa, the department shall notify the registering state agency in the registrant’s new state of residence of the registrant’s name, new address, and telephone number. Upon notification of the

appropriate out-of-state agency, the department shall remove the registrant from the active registry, unless the registrant continues to maintain a residence or place of employment in Iowa or attends school in Iowa. The registrant shall not be required to submit periodic verifications of address while not on the active registry. The department shall maintain the registrant's file in the event the registrant establishes a residence in Iowa or becomes a student, an employee, or practices a vocation at an institution of higher education in Iowa in the future. The department may also maintain the file for any other purpose.

c. Upon any submission of Form DCI-145, the form shall be accompanied by current photographs and fingerprints of the offender.

d. A list of all registrants within a county may be provided by the division of criminal investigation to the county sheriff.

83.3(3) Periodic verification. A registrant shall appear personally in the office of the sheriff of the county or counties of principal residence periodically as required by ~~2009 Iowa Acts, Senate File 340, section 8,~~ Iowa Code section 692A.108 to verify relevant information. A tier I offender shall appear annually, or more frequently if required by the sheriff; a tier II offender shall appear every six months, or more frequently if required by the sheriff; and a tier III offender shall appear every three months, or more frequently if required by the sheriff. Form ~~DCI-146~~ DCI-146R, Periodic Verification Notification Form, shall be mailed by the division of criminal investigation to each registrant at the last address known to the registry at least 30 days prior to each required appearance. The registrant shall appear between the first and last day of the verification month. Form ~~DCI-146~~ DCI-146R shall clearly state that it is to be returned to the division of criminal investigation if the addressee no longer resides at the address indicated and that Iowa law prohibits its being forwarded.

a. Each registrant shall report to the sheriff of a the county of principal residence of the registrant ~~within ten days of receipt of the periodic verification notification form.~~ The sheriff shall take a current photograph of the registrant and shall submit the photograph to the registry.

b. The sheriff of any county of residence of a registrant may, at any time, instruct the registrant to report to the sheriff's office for the purpose of the taking of a current photograph. Such instructions shall be mailed to the registrant at the registrant's current address of registration. The registrant shall report to the sheriff's office within ten days of receiving such instructions. The sheriff shall submit the current photograph of the registrant to the registry.

ITEM 3. Amend subrule 83.3(5) as follows:

83.3(5) Application for determination. Form DCI-148, Application for Determination, shall be completed by a person to initiate a request that the department review whether one or more offenses of which the person has been convicted require registration with the Iowa sex offender registry, whether the time period during which the person is required to register has expired, whether the person is exempt from the placement of information on the sex offender registry ~~Web site~~ website, and the tier placement of the offender. A person who submits a completed copy of Form DCI-148 for review shall provide with it copies of any sentencing or adjudicatory orders related to each offense for which a determination of whether registration is required is being requested. The completed application (Form DCI-148) shall specify the exact grounds for the application and shall include a statement of any additional facts or law which the person intends to present to the department in support of the application. Failure to submit any of the required information shall constitute grounds for denial of the application. If the application sets forth an issue of fact which cannot be evaluated based upon the record of convictions, sentencing and adjudicatory orders, relevant statutory provisions, and other records provided, and is material to the determination, the commissioner may refer the matter to an administrative law judge or presiding officer for a contested case hearing.

NOTE: Filing an application for determination does not excuse a person from having to comply with any of the applicable provisions of Iowa Code chapter 692A ~~as amended by 2009 Iowa Acts, Senate File 340,~~ during the period prior to the issuance of the decision of determination.

ITEM 4. Amend subrule 83.3(7) as follows:

83.3(7) Request for information. Requests for information about whether a specific individual is registered shall be made to a county sheriff or local police department and may be made in person, by

telephone, or in writing. Form DCI-150, Request for Registry Information, may be used by a member of the public to request information about whether a specific person is registered with the Iowa sex offender registry. A person requesting information about whether a specific individual is registered with the Iowa sex offender registry may submit a completed copy of Form DCI-150 to a sheriff or police department. If a request for information is submitted using Form DCI-150, a separate form shall be submitted for each person about whom information is being requested.

ITEM 5. Amend subrule 83.4(2) as follows:

83.4(2) *Sex offender registry ~~Web-site~~ website.* The department shall place information regarding each registrant on the registry ~~Web-site~~ (~~www.iowasexoffenders.com~~) website (www.iowasexoffender.gov), except that information regarding any registrant for whom the sole basis of registration is a conviction or convictions for a violation or violations of Iowa Code section 709.4, subsection 2, paragraph “c,” subparagraph (4) 709.4(1)“b”(3)(d), and whose offense was committed when the offender was under 20 years of age, shall not be placed on the ~~Web-site~~ website. Information regarding a registrant placed on the sex offender registry ~~Web-site~~ website may include any relevant information allowed under Iowa Code section 692A.121.

ITEM 6. Amend paragraph **83.4(3)“b”** as follows:

b. The general public, including public and private agencies, organizations, public places, child care facilities, religious and youth organizations, neighbors, neighborhood associations, community meetings, and employers. Registry information may be distributed to the public through printed materials, visual or audio press releases, radio communications, or a criminal or juvenile justice agency’s ~~Web-site~~ website.

ITEM 7. Amend subrule 83.4(5) as follows:

83.4(5) *Release of information in response to individual request.* A sheriff or police department that receives a request for information about whether a specific individual is registered or not shall inquire of the division of criminal investigation via the Iowa on-line warrants and articles (IOWA) system or the sex offender registry application (SORA) as to whether the person about whom information was requested is registered with the Iowa sex offender registry. If the division of criminal investigation notifies the sheriff or police department that the person about whom inquiry is made is not on the registry, the sheriff or police department shall so notify the person who submitted the request. If the division of criminal investigation notifies the sheriff or police department that the person about whom inquiry was made is a registrant with the Iowa sex offender registry, the sheriff or police department shall notify the person making the inquiry that the person about whom the inquiry was made is a registrant and may provide the requester with the relevant information allowed under Iowa Code section 692A.121 regarding the registrant.

ITEM 8. Rescind subrule **83.4(9)**.

ITEM 9. Amend **661—Chapter 83**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 692A ~~as amended by 2009 Iowa Acts, Senate File 340.~~